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APR 19 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Bartsch et al. :
Application No. 08/656,811 :
Filed: June 3, 1996 :
Attorney Docket No. :
0575/50865/JPW/AJM/BJA :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 6, 2004, to revive the above-identified application. In view of the allegation in the petition of the timely filing of a reply and the evidence submitted in support thereof, the petition is more properly a petition under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **GRANTED**.

The above-identified application was held abandoned for failure to file an appeal brief (and fee required by 37 CFR 1.17(c)) within the time period provided in 37 CFR 1.192(a). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed October 29, 2002, and no extensions of time under the provisions of 37 CFR 1.136(b) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the above-identified application was held abandoned on December 30, 2002. See MPEP 1215.04. A Notice of Abandonment was mailed on June 30, 2003.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard, which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on December 13, 2002 of 1. a 2 page RCE Request Transmittal (in triplicate); 2. a Preliminary Communication; 3. and a check in the amount of \$370.00. Additionally, petitioner has supplied a copy of the previously mailed correspondence, along with the Express Mail certificate, which bears a certificate of mailing date of December 13, 2002.

The reply acknowledged as having been received in the USPTO on December 13, 2002 is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Further, a review of USPTO financial records indicates the \$370.00 check was processed on December 16, 2002. Accordingly, it is concluded that the reply was timely received in the USPTO but was apparently lost after receipt thereof.


In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee. The \$685.00 petition fee will be credited to petitioner's deposit account as authorized.

The Office sincerely apologizes for the inconvenience caused the petitioner in this matter.

This application is being returned to Technology Center AU 1646 for further examination on the merits.

Telephone inquiries concerning this decision should be directed to Paralegal Liana Chase at (571) 272-3206.


Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy